death will be occasioned. A testator no more offends public policy by simply making his bounty contingent upon the occurrence of a divorce than of a death." This language clearly implies that no legal objection exists to the action of a testator who makes the realization of a gift dependent upon the death of some other person than the final donee. Conn., 387.

In Daboll *v.* Moon (88 Conn. 387) a testamentary gift, conditioned to take effect upon the death of the wife of the donee, or if he should obtain a divorce or become separated from her at the end of a year, or should marry a good respectable woman within the year, was held not to be void as against the public policy of the State. In the case cited the gift was to vest in a son of the testator, upon the death of his wife, or upon his divorce from her, or upon his permanent separation from her. The court was asked to hold that the condition upon which the legacy was to vest was void as against public policy, with the result of making the gift absolute so as to vest in the donee without performance of the condition. The court declared that "where it is possible that the condition may be legally performed it will not be presumed that the testator intended an illegal performance. The present gift was upon alternative conditions, one of which was the death of Willard's wife. It will not be presumed that the testator, in the absence of express language, was directing or intended that his son should procure his wife's death."

R. C. W.

VIRGINIA RY. & POWER CO. *v.* O'FLAHERTY.

March 16, 1916.

Rehearing Denied April 3, 1916.

[88 S. E. 312.]

1. Carriers (§ 250*)—Rules and Regulations—Payment of Fare.—It is a reasonable rule for a street railroad to require its passengers personally to deposit the fare in a coin and ticket collection box before entering the car when such regulation is intended to facilitate traffic.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1000-1004; Dec. Dig. § 250.*]

2. False Imprisonment (§ 15 (3)*)—Operation—Powers and Duties of Employees.—Under Code 1904, § 1294d, providing that each conductor and motorman on cars of a street railroad shall be a special policeman, and have all the powers of conservators of the peace, when a passenger enters the car without paying his fare, and refuses to deposit it in the coin and ticket collection box provided for the purpose, as required by the rules of the company, the conductor may detain him and carry him to the end of the line, and there turn him over to a regular police officer.

[Ed. Note.—For other cases, see False Imprisonment, Cent. Dig. §§ 62-67; Dec. Dig. § 15 (3)*.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Law and Equity Court of City of Richmond.

Action by D. C. O'Flaherty against the Virginia Railway & Power Company. From a judgment for plaintiff, defendant brings error. Reversed.

H. W. Anderson, A. B. Guigon, and *Thos. P. Bryan,* all of Richmond, for plaintiff in error.

Gunn & Matthews, M. J. Fulton, and *R. E. Byrd,* all of Richmond, for defendant in error.

WHITTLE, J. This writ of error brings to our attention a judgment of the law and equity court of the city of Richmond awarding defendant in error $500 damages in an action for false imprisonment.

By consent of parties a jury was waived, and all matters of law and fact were submitted to the court. The trial court's finding of essential facts discloses this situation: Plaintiff below boarded a Broad and Main street "pay-as-you-enter" car of defendant as an intending passenger for transportation from the eastern to the western part of the city of Richmond. There is a public regulation of defendant which requires an intending passenger, upon entering the car, personally to put his fare in a till or box maintained on the rear platform, and also a rule that forbids conductors, under any circumstances, on pain of dismissal, to accept fares, and enjoins upon them the duty of requiring passengers to deposit the same in the box. On the instant occasion plaintiff entered the car without depositing his fare, and when his attention was called to the omission by the conductor he tendered him a ticket, but refused to deposit it in the box. Thereupon the conductor insisted that he should either comply with the rule or leave the car; and, upon his repeated refusal to do either, the conductor, exercising his authority as a policeman or conservator of the public peace, arrested plaintiff and detained him on the car until it arrived at the reservoir, the western terminus of the line, when he was turned over to the city authorities and admitted to bail.

The trial court in its opinion said:

"The evidence shows that both the conductor and the motorman exercised their rather disagreeable duties in a polite and courteous manner, and acted in good faith and without malice in what they did, and that, while there was some controversy between the plaintiff and the conductor, there was nothing in the nature of actual disorder upon the car. * * *."

[1] The court correctly held:

"That the rule of the defendant requiring a passenger to deposit his fare (or ticket) in the box is a reasonable regulation, and one with which the passenger should comply. The burden

imposed upon the passenger of stepping back to the platform and personally putting his fare in the box, when he has taken his seat without doing so, is very slight, and taken in connection with the purposes of a pay-as-you-enter car, and with the necessity of rendering street car traffic in crowded cities as efficient as practicable for the general public, is not an unreasonable requirement. * * * This rule in question here was a public regulation of the company of which the plaintiff had knowledge. By the refusal of the plaintiff to pay his fare in the manner required by this regulation he placed himself in default. Upon his refusal so to pay, or to leave the car, the company by its agents, the conductor and the motorman, acquired the right to eject him from the car."

The authorities fully sustain the above statement of the law.

"It is well-settled law that a carrier has a right to make reasonable rules and regulations for the conduct of its affairs, and that they are binding upon the passengers and the public dealing with the carrier when brought to their notice. * * * The reasonableness of the rules and regulations of a railroad company is a question of law addressed to the courts." N. & W. Ry. Co. *v.* Wysor, 82 Va. 250, at pages 260, 261; Va. & S. W. Ry. *v.* Hill, 105 Va. 738, 54 S. E. 872, 6 L. R. A. (N. S.), 899; N. & W. Ry. Co. *v.* Brame, 109 Va. 422, 430, 63 S. E. 1018.

"It is within the power of the company to make and enforce a reasonable rule as to the time, place, and manner of payment of fares." Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 99 S. W. 992, 9 L. R. A. (N. S.) 579, 10 Ann. Cas. 641; Nellis on Street Railways (2d Ed.), § 264.

There are numerous cases which uphold the reasonableness of rules similar to the one under consideration and the duty of the passenger to comply with them, and, upon refusal, the power of the conductor to eject him. Martin *v.* Rhode Island Co., 32 R. I. 162, 78 Atl. 548, 32 L. R. A. (N. S.) 695, Ann. Cas. 1912C, 1283; Nye *v.* Maryville, etc., Co., 97 Cal. 461, 32 Pac. 530; Kitchen *v.* Saginaw (C. C.), cited in 117 Mich. 254. 75 N. W. 466, 41 L. R. A. 817.

The case of Elder *v.* International Ry. Co., 68 Misc. Rep. 22, 122 N. Y. Supp. 880, is very similar in its facts to the case in judgment. There, as here, the plaintiff, after some altercation, "offered to pay the fare, but the conductor stated to him that he would have to go back to the platform and deposit the nickle in the fare box, because the rules of the company forbade him from handling the fare. The plaintiff evidently felt incensed at this, but, while willing to pay an additional fare, refused to walk back and put it into the box." He was ejected without violence. "The 'pay-as-you-enter' system of collecting street car fares has

been adopted in part for the purpose of guarding against the possible dishonesty of conductors. * * * Manifestly a general rule requiring the passengers on entering a car to deposit fares in the box themselves is a reasonable one. Montgomery v. Buffalo, etc., Co., 165 N. Y. 139, [58 N. E. 770]. * * * Particular circumstances are not sufficient excuse for a noncompliance with a reasonable rule, but that the passenger is bound to submit to it, and the duty of the conductor is to enforce it. * * * 'Passengers must know that conductors cannot dispense with the rules of the company, and if they do not the law charges them with such knowledge.'"

[2] As we have seen, the law and equity court concedes the power of the conductor, in the circumstances, to have ejected plaintiff for refusal to comply with the regulation or leave the car. Yet the court was of opinion that the arrest of plaintiff was unlawful, and entitled him to recover substantial damages. In that view we are unable to concur.

Clause 45 of section 1294d of the Code is as follows:

"Each conductor and motorman in the employ of said company, upon the cars of said company, shall be a special policeman, and have all the powers of conservators of the peace while upon the cars and right of way of said company in the enforcement of the provisions of this act, and in the discharge of his duty as special policeman in the enforcement of order upon said cars and said right of way."

The construction placed by the trial court on the powers and duties of conductors and motormen under the statute is too restricted. When plaintiff, in disregard of a lawful rule of the company of which he had knowledge, on request, refused either to deposit his fare in the box or leave the car, the relation of carrier and passenger between the company and him ceased, and he became an intruder or trespasser on the car. In other words, his presence on the car was unlawful. And the conductor, as a conductor and conservator of the peace and special policeman charged with the enforcement of order upon the car, without fault on his part, was confronted with the alternative, either of arresting plaintiff and turning him over to the city authorities, or forcibly ejecting him from the car. From the temper of plaintiff the conductor was warranted in the belief that any attempt on his part to eject him would lead to violence and a breach of the peace, which it was his duty to conserve. Therefore the conductor, in his capacity of conservator of the peace and special policeman, in a polite and courteous manner, and in good faith, and without malice, pursued the other alternative, and in so doing acted within the scope of his authority and in the line of his duty

as a state officer, exercising his best judgment in an emergency for the existence of which plaintiff was responsible.

It thus appears that the grievance of which plaintiff complains was self-imposed. He was master of the situation, with power, in the first instance, to have obviated the annoyance, and continuously thereafter to have relieved it, simply by complying with a reasonable rule which obviously it was his duty to observe. It is against the policy of the law and beyond the competency of courts to award damages to a plaintiff so in fault.

For these reasons, the judgment must be reversed, and judgment entered for the plaintiff in error, defendant below.

Reversed.

Note.—The right of a carrier to make rules and regulations in carrying on its business is well settled and hardly needs citation of authority to uphold so universal a proposition. Funerburg *v.* Augusta, etc., R. Co., 81 S. C. 141 and cases cited in Michie on Carriers, § 2491.

It is one of the powers of carriers to make reasonable regulations fixing the time, place and manner of payment of fares by passengers. Michie on Carriers, § 2202. This power is based on the necessity of promoting uniformity and efficiency. The incidental power of a common carrier to establish reasonable rules regulating the time, place, and mode for payments of its reasonable charge is unquestioned, and is amply sustained by the authorities. 28 Am. & Eng. Enc. Law, p. 166; Reese *v.* Pennsylvania R. Co. (1890), 131 Pa. 422, 19 Atl. 72, 17 Am. St. Rep. 818, 6 L. R. A. 529. 1 Elliott, Railroads, § 199. Martin *v.* Rhode Island Co., 32 R. I. 162, 32 L. R. A. (N. S.). 695, 697.

While this proposition is universally accepted, the determining what is a reasonable rule in particular cases is not as readily determined. As to what is a reasonable rule of a carrier is a question of law to be determined by the Court. Knoxville, Tract. Co. *v.* Wilkerson, 117 Tenn. 482, Michie on Carriers, § 2202.

The rule of carriers requiring the payment of fares in advance is valid, 10 Am. Eng. Ann. C. S. 641, and also an extra charge for failure to procure a ticket such being rules which will aid the carrier in accommodating the traveling public. In Kennedy *v.* Birmingham Ry. etc., Co., 138 Ala. 225, a regulation requiring a higher rate where cash is paid was held to be an unreasonable regulation because no opportunity was given the passenger to purchase a ticket.

Most of the cases decided on the question of the reasonableness of a rule of a carrier requiring fares to be deposited in a box upon entering a car are raised on the question of the right of the conductor to eject the passenger upon refusal to deposit his fare and the principal case is novel as the question there arose as to the right of the street car company to hold the passenger and turn him over to the police for breach of law, in refusing to deposit his fare in a box, although willing to pay the fare required to the conductor. In Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 99 S. W. 992, holding that a rule of the car company, requiring passengers to present in payment of fare a bill or coin not exceeding five dollars, was reasonable, the court said: The reasonableness or unreasonableness of rules made by public corporations affecting their relations with the public largely depends upon the peculiar business in which the corporation is en-

gaged and the established custom and usages of the locality where it is operating. Rules of this character, made by street railroads, should be such as are fairly necessary to expedite the discharge of their duties to the public, and at the same time be consistent with the comfort, convenience, and safety of their passengers. Knoxville Traction Co. *v.* Wilkerson (Tenn.), 99 S. W. 992, 9 L. R. A. (N. S.), 579, 580. In Curtis *v.* Louisville City R. Co. (1893), 94 Ky. 573, 576, 21 L. R. A. 649, 23 S. W. 363, 364, the court said: "By the rules of the appellee, a passenger that gets on a street car must deposit his fare in the box within one block. The driver must not receive the fare, etc., * * * These rules are reasonable, and the appellant was aware of them." Martin *v.* Rhode Island Co., 32 R. I. 162, 32 L. R. A. 695, 700. A rule of a street car company requiring passengers to deposit their fare in a box is a reasonable rule and failure to do so will warrant an ejection of the passenger. Nye *v.* Maryville, etc., Co., 97 Cal. 461. A general rule of a street railroad requiring passengers to deposit fares in a box on entering the car, and forbidding conductors from handling fares, is a reasonable one, and while exceptional circumstances may arise which will make the strict enforcement of the rule vexatious, the railroad need not provide for all the possible exceptions, justifying a suspension of the rule. Elder *v.* International Ry. Co., 122 N. Y. S. 880. Commissioners *v.* McGinn (Penn.), 29 Leg. Int. 124; Lackman *v.* Union, etc., R. Co. (Penn.), 1 Wkly. Notes Cas., 446. In upholding the reasonableness of a rule of a street car company requiring passengers to deposit fares in a box, the court said: "It is quite obvious that the rules in question in this case are far less burdensome to the passenger than many rules regarding the manner of payment of fares, purchase and showing of tickets, taking transfers, making change, and other matters incident to the passenger's right to carriage, which have been held to be reasonable by courts of undoubted authority." Martin *v.* Rhode Island Co., 32 R. I. 162, 32 L. R. A. (N. S.), 695, 699. See also, Burge *v.* Georgia R. & Electric Co., 133 Ga. 423, 65 S. E. 879, 18 A. & E. Ann. Cas. 42; Knoxville Traction Co. *v.* Wilkerson, 117 Tenn. 482, 9 L. R. A. (N. S.), 579, 99 S. W. 992, 10 A. & E. Ann. Cas. 641; Funderburg *v.* Augusta & A. R. Co., 81 S. C. 141, 21 L. R. A. (N. S.), 868, 61 S. E. 1075.

The right of street car companies to make rules requiring passengers to deposit fares in a box upon entering the car has been questioned and claimed to be unreasonable since they are for the benefit of the street car company and in no way contribute to the convenience of the passengers but are merely rules to protect the street car company against deceit and dishonesty of their conductors. Such rules are reasonable and valid since they aid in protecting the travelling public against the chance of making wrong exchange of money. Morley *v.* Saginaw, 117 Mich. 246.

L. F. SMITH.